110TH CONGRESS 1ST SESSION

H. R. 3578

To safeguard the economic health of the United States and the health and safety of United States citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 18, 2007

Mr. Sherman (for himself, Mr. Chabot, Mr. Donnelly, and Mr. Cohen) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Foreign Affairs and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To safeguard the economic health of the United States and the health and safety of United States citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Intellectual Property
- 5 Rights Enforcement Act".

SEC. 2. FINDINGS.

2 Th	e Congress	makes	the	following	findings:
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- 3 (1) The greatest economic assets of the United 4 States are its innovators, entrepreneurs, and work-5 ers.
 - (2) Counterfeiting and piracy cost United States businesses, authors, and artists hundreds of billions of dollars annually.
 - (3) Counterfeiting and piracy have resulted in the loss of hundreds of thousands of jobs in the United States.
 - (4) Counterfeit medicines and automobile and aviation parts may result in serious health problems and death.
 - (5) The World Customs Organization estimates that up to 7 percent of global trade is in counterfeit goods.
 - (6) The World Customs Organization estimates that global trade in counterfeit and pirated goods has increased from \$5,500,000,000 to more than \$600,000,000,000 annually.
 - (7) Small- and medium-sized businesses are particularly vulnerable to intellectual property theft because they often lack the resources to pursue recourse overseas or absorb the financial losses stemming from counterfeiting and piracy.

- 1 (8) Terrorist groups have used the sale of coun-2 terfeit goods to finance their activities.
 - (9) Funds generated from intellectual property theft have financed acts of terrorism.
 - (10) The domestic and international efforts of the United States to curb intellectual property rights violations would be enhanced through hands-on leadership by the President, increased coordination among agencies, and a strategic partnership with like-minded countries.
 - (11) Congress finds that no less than 9 United States Government agencies bear responsibility for supporting intellectual property rights, including the Department of the Treasury.
 - (12) The efforts to enforce intellectual property rights should be elevated across agencies due to the increasing cost to the economy and the threat to the health and safety of United States citizens.
 - (13) The success of intellectual property enforcement requires that a network of Government agencies work closely with Federal, State, and local law enforcement agencies.
 - (14) The domestic and international efforts of the United States to combat money laundering serves as a useful model for strengthening domestic

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- and international intellectual property rights en forcement.
- 3 (15) The Financial Crimes Enforcement Net-4 work (FinCEN) represents a key effort by the 5 United States to combat money laundering and 6 other financial crimes.
 - (16) FinCEN has effectively enhanced the exchange of information relating to money laundering and terrorist financing, both domestically and internationally.
 - (17) FinCEN combats money laundering internationally by partnering with other enforcement-minded countries through the Financial Action Task Force (FATF).
 - (18) FATF members have established effective standards that they collectively agree to implement and against which they agree to be assessed through peer review.
 - (19) The success of intellectual property rights enforcement requires that United States Government agencies form an effective network to take advantage of their diverse capabilities and to share information for the purpose of enhancing the enforcement capabilities of each agency and the United

- States Government-wide intellectual property rights
 enforcement effort.
- 3 (20) The Department of the Treasury's Office 4 of Terrorism and Financial Intelligence would be an 5 effective tool in combating intellectual property 6 theft.
 - (21) The success of international intellectual property rights enforcement requires that the United States partner with other countries that also suffer from extensive intellectual property theft.
 - (22) The success of international intellectual property rights enforcement requires that the United States share information within an effective international task force of countries that are dedicated to achieving results in the fight against intellectual property theft.
 - (23) The success of international intellectual property rights enforcement will be enhanced if the United States and other reliable international partners engage in joint enforcement operations and work to strengthen the intellectual property rights enforcement capacity of countries with a poor record of intellectual property rights enforcement.
 - (24) An effective exchange of information domestically and internationally will enhance the abil-

1	ity of the United States Trade Representative to en-
2	force violations of trade agreements.
3	(25) The success of domestic and international
4	intellectual property rights enforcement requires an
5	effective partnership between the public and private
6	sector and other interested groups.
7	SEC. 3. NATIONAL INTELLECTUAL PROPERTY LAW EN
8	FORCEMENT COORDINATION COUNCIL RE-
9	PEAL.
10	Section 653 of the Treasury and General Government
11	Appropriations Act, 2000 (15 U.S.C. 1128) is repealed
12	SEC. 4. THE INTELLECTUAL PROPERTY ENFORCEMENT
12 13	SEC. 4. THE INTELLECTUAL PROPERTY ENFORCEMENT NETWORK.
13	NETWORK.
13 14	NETWORK. (a) Establishment.—
13 14 15	NETWORK. (a) Establishment.— (1) In general.—There is established the In-
13 14 15 16	NETWORK. (a) Establishment.— (1) In general.—There is established the Intellectual Property Enforcement Network (in this
13 14 15 16	NETWORK. (a) ESTABLISHMENT.— (1) IN GENERAL.—There is established the Intellectual Property Enforcement Network (in this section referred to as the "IPEN").
113 114 115 116 117	NETWORK. (a) ESTABLISHMENT.— (1) IN GENERAL.—There is established the Intellectual Property Enforcement Network (in this section referred to as the "IPEN"). (2) MEMBERSHIP.—The IPEN shall consist of
113 114 115 116 117 118 119	NETWORK. (a) ESTABLISHMENT.— (1) IN GENERAL.—There is established the Intellectual Property Enforcement Network (in this section referred to as the "IPEN"). (2) Membership.—The IPEN shall consist of the following officials or their designees:
13 14 15 16 17 18 19 20	NETWORK. (a) ESTABLISHMENT.— (1) IN GENERAL.—There is established the Intellectual Property Enforcement Network (in this section referred to as the "IPEN"). (2) Membership.—The IPEN shall consist of the following officials or their designees: (A) The Deputy Director for Management
13 14 15 16 17 18 19 20 21	NETWORK. (a) ESTABLISHMENT.— (1) IN GENERAL.—There is established the Intellectual Property Enforcement Network (in this section referred to as the "IPEN"). (2) MEMBERSHIP.—The IPEN shall consist of the following officials or their designees: (A) The Deputy Director for Management of the Office of Management and Budget, who

1	(b)(2)(A), who shall serve as vice chairperson of
2	the IPEN.
3	(C) The Deputy Attorney General.
4	(D) The Deputy Secretary for Homeland
5	Security.
6	(E) The Deputy Secretary of the Treasury.
7	(F) The Deputy Secretary of Commerce.
8	(G) The Deputy Secretary of State.
9	(H) A Deputy United States Trade Rep-
10	resentative, as determined by the United States
11	Trade Representative.
12	(I) Such other officials as the members of
13	the IPEN shall consider necessary and appro-
14	priate.
15	(3) Relevant agencies.—In this section, the
16	term "relevant agency" means an agency of which
17	an official listed in paragraph (2) is a member, in-
18	cluding an agency of which an official identified by
19	the IPEN under paragraph $(2)(I)$ is a member.
20	(b) Organization.—
21	(1) Meetings.—The IPEN shall meet at least
22	once every 6 months to approve the ongoing oper-
23	ations of the IPEN, to provide overall direction for
24	the IPEN, to approve the strategic plan referred to
25	in subsection (h) and the report referred to in sub-

1	section (i), and to approve the budget referred to in
2	paragraph (2)(B)(i).
3	(2) Coordinator.—
4	(A) IN GENERAL.—The day-to-day func-
5	tions of the IPEN shall be carried out by a Co-
6	ordinator for Intellectual Property Enforcement
7	(in this Act referred to as the "Coordinator")
8	who shall be appointed by the President.
9	(B) Other responsibilities.—In addi-
10	tion to the responsibilities described in subpara-
11	graph (A), the Coordinator shall be responsible
12	for the following:
13	(i) Developing for each fiscal year,
14	with the advice of the officials of the IPEN
15	and the relevant agencies, a budget pro-
16	posal to implement the policies, objectives,
17	and priorities described in subsection (c).
18	(ii) Drafting and transmitting to the
19	President and the Congress the strategic
20	plan referred to in subsection (h) and the
21	report referred to in subsection (i).
22	(c) Duties.—The IPEN, established under sub-
23	section (a), shall be responsible for the following:
24	(1) Coordinating and facilitating implementa-
25	tion by the relevant agencies of the policies, objec-

1	tives, and priorities described in paragraph (2), and
2	fulfilling the responsibilities assigned to such agen-
3	cies to complete the actions described in paragraph
4	(3).
5	(2) Establishing policies, objectives, and prior-
6	ities concerning international intellectual property
7	protection and intellectual property law enforcement.
8	The policies, objectives, and priorities shall include—
9	(A) eliminating counterfeit and pirated
10	goods from the international supply chain;
11	(B) identifying individuals, companies,
12	banks, and other entities involved in the financ-
13	ing, production, trafficking, and sale of counter-
14	feit and pirated goods;
15	(C) identifying and sharing information
16	among the relevant agencies for the purpose of
17	arresting and prosecuting persons who are
18	knowingly involved in the financing, production,
19	trafficking, and sale of counterfeit and pirated
20	goods;
21	(D) disrupting and shutting down counter-
22	feit and piracy networks;
23	(E) strengthening the capacity of other
24	countries to protect and enforce intellectual

property rights and reducing the number of

1	countries that fail to enforce laws that prevent
2	the financing, production, trafficking, and sale
3	of counterfeit and pirated goods; and
4	(F) working with like-minded countries to
5	establish international standards and policies
6	for the effective protection and enforcement of
7	intellectual property rights.
8	(3) Protecting United States intellectual prop-
9	erty rights overseas, including—
10	(A) working with similar networks in for-
11	eign countries to create an effective inter-
12	national intellectual property enforcement task
13	force (in this Act referred to as the "inter-
14	national task force");
15	(B) ensuring the international task force
16	described in subparagraph (A) consists of net-
17	works in countries that—
18	(i) suffer substantial intellectual prop-
19	erty theft problems similar to those of the
20	United States;
21	(ii) have adequate and effective laws
22	protecting copyrights, trademarks, and
23	patents;
24	(iii) have legal regimes that enforce
25	their own domestic intellectual property

1	laws, and have a proven track record of
2	permanently shutting down piracy oper-
3	ations, and arresting and prosecuting those
4	who commit intellectual property crimes
5	and offenses;
6	(iv) have officials who have ex officio
7	authority to seize, inspect, and destroy pi-
8	rated and counterfeit goods at ports of
9	entry (or are working toward providing of-
10	ficials with such authority);
11	(v) have officials who can order the
12	seizure of pirated and counterfeit goods (or
13	are working toward providing officials with
14	such authority);
15	(vi) have laws in place that permit of-
16	ficials to seize property used to produce pi-
17	rated and counterfeit goods (or are work-
18	ing toward providing officials with such au-
19	thority);
20	(vii) are not on the Priority Watch
21	List issued by the United States Trade
22	Representative under title III of the Trade
23	Act of 1974 (19 U.S.C. 2411 et seq.); and

1	(viii) have met additional standards to
2	be established by the international task
3	force;
4	(C) exchanging information with networks
5	in the international task force relating to indi-
6	viduals and entities involved in financing, pro-
7	duction, trafficking, and sale of pirated and
8	counterfeit goods;
9	(D) utilizing the information to conduct
10	enforcement activities in cooperation with the
11	networks of other countries in the international
12	task force; and
13	(E) building a formal process for con-
14	sulting with companies, industry associations,
15	labor unions, and other interested groups in the
16	countries that have networks in the inter-
17	national task force.
18	(d) Staff.—
19	(1) IN GENERAL.—The Coordinator shall, in
20	consultation with the relevant agencies, appoint, and
	agonoros, appoint, and

(1) IN GENERAL.—The Coordinator shall, in consultation with the relevant agencies, appoint, and fix the compensation of, such officers and employees of the IPEN as may be necessary to carry out the functions of the IPEN and may request the temporary assignment of personnel from the relevant agencies.

1	(2) Assignment and cooperation of other
2	FEDERAL EMPLOYEES.—Each member of the IPEN
3	listed in subsection (a) shall designate personnel
4	from the member's relevant agency to work with the
5	IPEN and shall ensure that all units in the mem-
6	ber's relevant agency that have responsibility for the
7	protection and enforcement of intellectual property
8	rights provide information and personnel to the
9	IPEN in order for the IPEN to achieve the prior-
10	ities, objectives, and policies described in subsection
11	(e)(2).
12	(e) RESPONSIBILITY OF RELEVANT AGENCIES.—The
13	relevant agencies shall take the following actions:
14	(1) Share information collected to increase the
15	intelligence and effectiveness of the protection and
16	enforcement of intellectual property rights.
17	(2) Coordinate civil and criminal actions with
18	respect to persons who violate intellectual property
19	rights.
20	(3) Utilize information collected domestically
21	and from other countries in the international task
22	force, to—
23	(A) investigate, arrest, and prosecute enti-

1	ducing, trafficking, and selling counterfeit and
2	pirated goods;
3	(B) provide assistance to the Department
4	of Homeland Security, the Department of Jus-
5	tice, and other relevant agencies in identifying,
6	seizing, and destroying counterfeit and pirated
7	goods;
8	(C) provide assistance to the United States
9	Trade Representative in taking appropriate ac-
10	tion against countries that have violated World
11	Trade Organization rules regarding the protec-
12	tion of intellectual property rights; and
13	(D) provide assistance to the United States
14	Trade Representative in taking appropriate ac-
15	tion under any trade agreement or treaty to
16	which the United States is a signatory.
17	(4) Establish a formal process for consulting
18	and working with State and local government agen-
19	cies to investigate, arrest, and prosecute entities and
20	individuals involved in the financing, production,
21	trafficking, and sale of counterfeit and pirated
22	goods.
23	(5) Establish a formal process for consulting
24	with companies, including small and medium-sized

businesses, their designated representatives, and in-

- dustry associations to strengthen enforcement. Such
- 2 processes shall include the development of resources
- designed to assist businesses, industry associations,
- 4 and their representatives in addressing intellectual
- 5 property issues both domestically and internation-
- 6 ally.
- 7 (6) Establish a formal process for consulting
- 8 with writers and artists (and their organizations and
- 9 unions), labor unions, and other interested persons
- and groups that suffer from counterfeiting and pi-
- 11 racy.
- 12 (f) Consultation Required.—The members of the
- 13 IPEN shall consult with the Register of Copyrights on law
- 14 enforcement matters relating to copyright and related
- 15 rights and matters.
- 16 (g) Priority in International Talks.—Consid-
- 17 ering the threat that counterfeit and pirated goods pose
- 18 to the economic health of the United States, and the
- 19 health and safety of United States citizens, the President
- 20 and officers of the relevant agencies, when meeting with
- 21 foreign countries described in subsection (c)(3)(B),
- 22 should—
- 23 (1) stress the importance of establishing the
- international task force described in subsection
- 25 (c)(3)(A);

1	(2) strongly encourage countries to participate
2	in the international task force; and
3	(3) strongly encourage countries participating
4	in the international task force to cooperate with the
5	United States in ensuring the success of the inter-
6	national task force.
7	(h) Strategic Plan.—
8	(1) In general.—Within 6 months of the date
9	of the enactment of this Act, and once every 2 years
10	thereafter, the Director of the Office of Management
11	and Budget and the Coordinator shall submit a stra-
12	tegic plan to the President, and to the Committees
13	on the Judiciary, Homeland Security and Govern-
14	mental Affairs, and Appropriations of the Senate
15	and the Committees on the Judiciary, Oversight and
16	Government Reform, and Appropriations of the
17	House of Representatives.
18	(2) Contents.—The strategic plan required by
19	this subsection shall include the following:
20	(A) A detailed description of the goals, ob-
21	jectives, and priorities of the IPEN, including
22	those described in subsection $(c)(2)$.
23	(B) An analysis of the threat posed by vio-
24	lations of intellectual property rights, including

targets, risks, and threats of intellectual prop-

1	erty theft, and the costs to the economy of the
2	United States resulting from violations of intel-
3	lectual property laws.
4	(C) Proposed methods for achieving suc-
5	cess, including through the growth of the inter-
6	national intellectual property enforcement task
7	force described in subsection (c)(3).
8	(D) The performance measures that will be
9	used to monitor results.
10	(E) An estimate of the resources necessary
11	to achieve the goals, objectives, and priorities
12	described in subparagraph (A), and an estimate
13	of the cost of such resources.
14	(F) An identification of the relevant agen-
15	cies that will be involved in coordinating the
16	IPEN and implementing each priority.
17	(G) A strategy for ensuring coordination
18	between the chairperson and vice chairperson of
19	the IPEN, and the relevant agencies, including
20	a process for oversight of, and accountability
21	among, the relevant agencies carrying out the
22	strategy.
23	(H) A description of how the IPEN wil

carry out its oversight and accountability re-

1	sponsibilities to monitor and implement the
2	strategy.
3	(i) Report.—
4	(1) IN GENERAL.—The Director of the Office of
5	Management and Budget and the Coordinator shall
6	report annually on the IPEN's enforcement and co-
7	ordination activities for the fiscal year to the Presi-
8	dent, and to the Committees on the Judiciary,
9	Homeland Security and Governmental Affairs, and
10	Appropriations of the Senate, and the Committees
11	on the Judiciary, Government Reform, and Appro-
12	priations of the House of Representatives.
13	(2) Contents.—The report required by this
14	subsection shall include the following information:
15	(A) The progress made toward establishing
16	an international task force described in sub-
17	section $(e)(3)$.
18	(B) The progress made in working with
19	foreign networks in the international task force
20	to investigate, arrest, and prosecute entities and
21	individuals involved in the financing, produc-
22	tion, trafficking, and sale of counterfeit and pi-
23	rated goods.
24	(C) The manner in which the relevant
25	agencies are working together and sharing in-

- formation to strengthen the protection and enforcement of intellectual property rights.
 - (D) For each foreign network admitted or denied entry into the international task force, an explanation of the reasons for admitting or denying entry to the international task force, including reasons for admitting networks from those countries that are currently on the Priority Watch List issued by the United States Trade Representative under title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq.).
 - (E) The progress made in strengthening the capacity of countries denied entry into the international task force to protect and enforce intellectual property rights.
 - (F) The successes and challenges in sharing information with countries in the international task force.
 - (G) The progress of the United States Trade Representative in taking appropriate action under any trade agreement or treaty to which the United States is a signatory.
 - (H) The progress made in establishing and improving the formal process described in subsection (e)(4).

1	(I) The progress made in establishing and
2	improving the formal process described in sub-
3	section (e)(5).
4	(J) The progress made in establishing and
5	improving the formal process described in sub-
6	section $(e)(6)$.
7	(K) The progress made in implementing
8	the strategy in subsection $(h)(2)$.
9	(j) Government Accountability Office Re-
10	PORT.—Not later than 1 year after the date of the enact-
11	ment of this Act, the Comptroller General of the United
12	States shall complete a report and submit the report to
13	the Congress on the progress made on the items described
14	in subsections (h) and (i).
15	(k) Other Intellectual Property Activi-
16	TIES.—If other government intellectual property initia-
17	tives include enforcement activities similar or identical to
18	the activities described in this Act, those activities should
19	be consolidated into the work of the IPEN in order to
20	prevent duplication. Other activities that may improve en-
21	forcement may continue outside of the IPEN, including—
22	(1) capacity building;
23	(2) outreach to countries that would not qualify
24	for membership in the international task force; and

- 1 (3) other bilateral and multilateral cooperative
- efforts.
- 3 (l) Prohibited Actions.—This section shall not be
- 4 construed to require any act, measure, or other conduct
- 5 by any department, agency, or other instrumentality of the
- 6 United States that is prohibited by any law, regulation,
- 7 or rule of procedure.
- 8 SEC. 5. AUTHORIZATION OF APPROPRIATIONS.
- 9 There are authorized to be appropriated for each fis-
- 10 cal year such sums as may be necessary to carry out this
- 11 Act.
- 12 SEC. 6. EFFECTIVE DATE.
- This Act shall take effect on the date of the enact-
- 14 ment of this Act.

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